IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 932 OF 2003.

Usha D. Dawane..... ..... Petitioner

V/s

Union of India & Ors. ....
Respondents.

Mr.Ramesh Rammurthy for the petitioner.

Mr.Suresh Kumar, with Mr.P.M.Pradhan, for respondent No.1.

CORAM: V.G. PALSHIKAR
AND
SMT.RANJAN DESAI, JJ.

19th August, 2004.

ORAL JUDGMENT:(per Palshikar, J.)

By this petition the petitioner who was in the employment of the Government of India in Census Department has challenged the order by which her services were terminated for continued absence as also the order passed by Central Administrative Tribunal rejecting her Original Application.

2. The petitioner was appointed as Lower Division Clerk on ad-hoc basis on 27.8.1982 in the Census Department of Government of India. On 28.6.1991 the petitioner proceeded on leave and thereafter continued to remain on leave claiming maternity leave for the period between 13.7.1991 to 10.10.1991. Even thereafter the

petitioner continued to remain absent for quite some period. Ultimately her services were terminated under Rule 32(2)(d) read with Rule 20(2)(b) of Central Civil Service (Leave) Rules, 1974. This termination was communicated to the petitioner by order dated 17.11.1994. Earlier the petitioner sought to join her duties with certificate of fitness by her letter dated 1.8.1994. She was therefore directed to approach the Medical Board. Accordingly she approached the Board and a report was sent to the Government which report declared her to be permanently incapacitated on account of permanent Tuberculosis (TB) and other serious ailments, therefore the communication dated 17.11.994. Thereafter nothing was done by the petitioner in this regard.

3. It appears that the petitioner made an application on 24.7.2001 for seeking directions with regard to her joining the service in view of her health which was according to her cured. Office memorandum was therefore issued by Directorate of that department which is a department of Government of India, Ministry of Home Affairs on 31.7.2001 informing the petitioner that her services stood terminated long ago which communication was also received by her on 17.11.1994. Office Memorandum therefore stated that in view of these circumstances there was no question of permitting her to join the duties. It was thereafter that Original Application No.85/2002 was filed by the petitioner before the Central Administrative Tribunal, Bombay. The Central Administrative Tribunal in Bombay decided this application on 26.6.2002 rejecting the application as barred by time. While so doing the Tribunal noted all the events and having found that there is no explanation whatsoever forthcoming for not moving either the Tribunal or any other appropriate authority for getting orders set aside or challenging

the termination order issued in 1994. The Tribunal therefore observed that this delay of seven years which is wholly unexplained requires the Tribunal to dismiss the matter as barred by time. This order of the Tribunal is impugned before us on the grounds mentioned in the petition. At the time of arguments it was substantially canvassed before us that all these seven years were spent in corresponding with the Respondents-officials and therefore it cannot be said to be barred by limitation. The contention is that during all this period she was communicating with the department and trying to establish that her illness was genuine and her right to be taken in duty after she was cured has remained unaffected because the order of termination was unwarranted in view of the illness then existing. There is however nothing on record to show that beyond certain letters addressed by the petitioner to various officers of the Government of India anything further was done. The medical certificate dated 1.9.1994 is perused by us. It is issued by the Medical Board of J.J. Hospital, Bombay and it says in categoric terms that the petitioner suffered from TB which has resulted in shrinkage of right side lung. The petitioner herself has filed a certificate dated 23.7.2001 from the Dispensary of Central Government Health Scheme certifying that the petitioner has been examined in detail and after complete pathological examination she is certified to have recovered from TB and therefore was therefore fit to resume duties prior to this date. It certain does not prove that in 1994 when her services were terminated she was fit. It has been always her case that she was ill in the year 1994. In these circumstances termination cannot be said to be improper or incorrect or in any manner violative of Central Civil Service Rules . The Tribunal was also not wrong in rejecting the application as barred by limitation as no explanation is coming forward either before the Tribunal or before us which requires us

to believe that the delay is liable to be condoned. In the result therefore the petition fails and is dismissed.